



PUBLIC NOTICE

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DISPATCH

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**Universal Service, Third Report and Order,
CC Docket 96-45, FCC 97-380 (rel. Oct. 14, 1997)
Final Regulatory Flexibility Analysis**

1. On October 14, 1997 the Federal Communications Commission released the Third Report and Order in CC Docket 96-45, FCC 97-380 (Third Report and Order). This public notice makes the Final Regulatory Flexibility Analysis (FRFA) for the Third Report and Order available to the public, as required by the Regulatory Flexibility Act (RFA).¹

2. On March 8, 1996, as required by the Telecommunications Act of 1996 (1996 Act),² the Commission released a Notice of Proposed Rulemaking and Order Establishing a Joint Board on Universal Service.³ As required by the RFA, the *NPRM* included an Initial Regulatory Flexibility Analysis (IRFA).⁴ At that time, the Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. On May 8, 1997 the Commission released a Report and Order that included a Final Regulatory Flexibility Analysis.⁵ On September 10, 1997, the Common Carrier Bureau issued a Public Notice seeking comment on several issues with respect to the application process and the distribution of federal universal service support funds for schools, libraries, and rural health

¹ 5 U.S.C. § 604(b). The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² Pub. L. No. 104-104, 110 Stat. 56. The 1996 Act amends the Communications Act of 1934, 47 U.S.C. § 151 *et seq.*.

³ In the Matter of Federal-State Joint Board on Universal Service, *Notice of Proposed Rulemaking and Order Establishing a Joint Board* CC Docket No. 96-45, 11 FCC Rcd. 18,092 (1996) (*NPRM*) at paras. 135-42.

⁴ *See* 5 U.S.C. § 603.

⁵ Federal-State Joint Board on Universal Service, CC Docket 96-45, *Report and Order*, FCC 97-157 at paras. 870-983 (rel. May 8, 1997) (*May 8 Report and Order*).

care providers.⁶ This FRFA supplements the FRFA that was included in the *May 8 Report and Order* and incorporates the comments with respect to the proposal to adopt a filing window that were received in response to the Bureau's *September 10 Public Notice*. This present FRFA conforms to the RFA.⁷

3. *Need for, and Objectives of, this Third Report and Order.* The Commission is required by sections 254(a)(2) and 410(c) of the Act, as amended by the 1996 Act, to promulgate these rules to implement promptly the universal service provisions of section 254. As explained in detail below, the objectives of this Third Report and Order are to ease the administrative burden on, and reduce disparities among, schools, libraries, and rural health care providers that apply for universal service support. In the Third Report and Order, the Commission adopts a filing window that will treat all applications filed during the window as if they were simultaneously received.

4. *Summary of Significant Issues Raised by Public Comments.* Commenters overwhelmingly recommended adoption of a filing window in order to ease the administrative burdens on schools, libraries, and rural health care providers, particularly the burden on smaller entities with fewer administrative resources.⁸ Some commenters urged the Commission to ensure that applicants in all states would receive some opportunity to receive funding.⁹

5. *Description and Estimates of the Number of Small Entities to Which the Rules Adopted in this Third Report and Order will Apply.* The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁰ In addition, the term "small business" has the same meaning as

⁶ Common Carrier Bureau Seeks Comment on Universal Service Support Distribution Options for Schools, Libraries, and Rural Health Care Providers, CC Docket 96-45, *Public Notice*, DA 97-1957 (Sept. 10, 1997) (*September 10 Public Notice*). This Public Notice was published in the Federal Register on September 15, 1997. 62 Fed. Reg. 48280 (Sept. 15, 1997). Comments were filed on September 25, 1997.

⁷ See 5 U.S.C. § 604.

⁸ See, e.g., Alaska at 1-2; Anchorage School Dist. at 1; DataCast at 1; Great City Schools Council at 2; Kansas Hosp. Ass'n at 1; KM Broadcasting at 4; Maine Dept. of Ed. at 1; Missouri PSC at 1-2; Missouri Res. Ed. Net. at 4; Missouri State Library at 2; Mississippi Council for Ed. Tech. at 2-3; NJ Ratepayer Advocate at 2; New York City Dept. of IT&T at 2; NYSDPS/NYSED at 1; North Dakota PSC at 1; CNMI at 4; RUPRI at 1; South Carolina OIR at 1; Utah Ed. Net. at 1.

⁹ See, e.g., Montana PSC at 2 (should assure that all states receive at least some opportunity to receive funding). See also Great City Schools Council at 2 (noting that window will not stop large buyers such as statewide consortia from claiming sizable portions of the initial \$1 billion allotment); Montana School Boards Ass'n at 2 (windows will exacerbate problem, will only ensure that similarly situated entities are treated more equally and will not ensure equal distribution across all states).

¹⁰ 5 U.S.C. § 601(6). These estimates remain unchanged from the *May 8 Report and Order*.

the term "small business concern" under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.¹¹ Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).¹² As noted, the RFA also applies to nonprofit organizations and to governmental organizations such as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.¹³ As of 1992, the most recent figures available, there were 85,006 governmental entities in the United States.¹⁴

6. For "small business" determinations in this context, the SBA has established a definition of small elementary and secondary schools and small libraries as those with under \$5 million in annual revenues.¹⁵ Other entities of this sort may be considered small under the other two prongs of the RFA. The most reliable source of information regarding the total number of kindergarten through 12th grade (K-12) schools and libraries nationwide of which we are aware appears to be data collected by the United States Department of Education and the National Center for Educational Statistics. Based on that information, it appears that there are approximately 86,221 public and 26,093 private K-12 schools in the United States (SIC 8211).¹⁶ It further appears that there are approximately 15,904 libraries, including branches, in the United States (SIC 8231).¹⁷ Although it seems certain that not all of these schools and libraries would qualify as small entities under the SBA's determination, we are unable at this time to estimate with greater precision the number of small schools and libraries that would qualify as small entities under the definition. Consequently, we estimate that there are fewer than 86,221 public and 26,093 private schools and fewer than 15,904 libraries that may be affected by the decisions and rules adopted in this Third Report and Order.

¹¹ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions in the Federal Register."

¹² Small Business Act, 15 U.S.C. § 632 (1996).

¹³ 5 U.S.C. § 601(5).

¹⁴ United States Department of Commerce, Bureau of the Census, *1992 Census of Governments* (1992 *Census of Governments*).

¹⁵ 13 C.F.R. § 121.201, SIC 8211 and 8231.

¹⁶ Letter from Emilio Gonzalez, to Mark Nadel, FCC, dated November 4, 1996 (U.S. Department of Education November 4 *ex parte*).

¹⁷ National Center for Education Statistics, *Public Library Structure and Organization in the United States*, Tbl. 1 (March 1996).

7. Neither the Commission nor the SBA has developed a definition of small, rural health care providers. Section 254(h)(5)(B) defines the term "health care provider" and sets forth the seven categories of health care providers eligible to receive universal service support.¹⁸ We estimate that there are: (1) 625 "post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools," including 403 rural community colleges,¹⁹ 124 medical schools with rural programs,²⁰ and 98 rural teaching hospitals;²¹ (2) 1,200 "community health centers or health centers providing health care to migrants;"²² (3) 3,093 "local health departments or agencies" including 1,271 local health departments²³ and 1,822 local boards of health;²⁴ (4) 2,000 "community mental health centers;"²⁵ (5) 2,049 "not-for-profit hospitals;"²⁶ and (6) 3,329 "rural health clinics."²⁷ We do not have sufficient information to make an estimate of the number of consortia of health care providers at this time. The total of these categorical numbers is 12,296. Consequently, we estimate that there are fewer than 12,296 health care providers potentially affected by the rules in this Third Report and Order. For the purposes of "small business" analysis, we note that according to the SBA definition, hospitals must have annual gross receipts of \$5 million or less to qualify as a small business concern.²⁸ There are approximately 3,856 hospital firms,

¹⁸ See 47 U.S.C. § 254(h)(5)(B).

¹⁹ Letter from Kent A. Phillippe, American Association of Community Colleges to John Clark, FCC, dated March 31, 1997 (AACC March 31 *ex parte* at 2).

²⁰ Letter from Donna J. Williams, Ass'n of American Medical Colleges, to John Clark, FCC, dated September 9, 1996 (AAMC September 9 *ex parte*).

²¹ Letter from Kevin G. Serrin, Ass'n of American Medical Colleges, to John Clark, FCC, dated September 5, 1996 (AAMC September 5 *ex parte*).

²² Letter from Richard C. Bohrer, Division of Community and Migrant Health, HHS, to John Clark, FCC, dated March 31, 1997 (HHS March 31 *ex parte* at 2).

²³ Telephone contact by John Clark, FCC, with Carol Brown, National Association of County Health Officials, May 2, 1997.

²⁴ Letter from Ned Baker, Nat'l Ass'n of Local Boards of Health, to John Clark, FCC, dated April 2, 1997 (Nat'l Ass'n of Local Boards of Health April 2 *ex parte*).

²⁵ Telephone contact by John Clark, FCC, with Mike Weakin, Center for Mental Health Services, HHS, on May 2, 1997.

²⁶ American Hospital Association Center for Health Care Leadership, *A Profile of Nonmetropolitan Hospitals 1991-95* at 5 (1997).

²⁷ Letter from Patricia Taylor, ORHP/HHS, to John Clark, FCC, dated May 2, 1997 (ORHP/HHS May 2 *ex parte*).

²⁸ 13 C.F.R. § 121.201, SIC 8060.

of which 294 have gross annual receipts of \$5 million or less. Although some of these small hospital firms may not qualify as rural health care providers, we are unable at this time to estimate with greater precision the number of small hospital firms which may be affected by this Third Report and Order. Consequently, we estimate that there are fewer than 294 hospital firms affected by this Third Report and Order.

8. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* This Third Report and Order will impose no additional reporting, recordkeeping or other compliance requirements on small entities.

9. *Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered.* Based on the nearly unanimous comments received in response to the *September 10 Public Notice*, the Commission concludes that all applications filed during the window will be treated as if simultaneously received.²⁹ The Commission finds that adopting such a window period will best serve the needs of applicants for universal service discounts, and will assist the administrative corporations in processing these requests in a timely manner. The Commission finds that the window will reduce pressure on applicants to submit their contracts at the earliest possible moment and, thus, will improve the accuracy and care with which these contracts are negotiated and the accompanying forms are completed. By providing additional time to complete contract negotiations after the four-week competitive bid waiting period, a window will allow schools to negotiate their contracts with greater care.³⁰ Further, this window will reduce disparities between applicants with substantial administrative resources and applicants with fewer resources, such as small schools, libraries, and health care providers.³¹ The Commission recognizes, as noted by the commenters, that this window will not eliminate all disparities among applicants.³² The Commission adopted annual funding caps, \$2.25 billion for schools and libraries and \$400

²⁹ See, e.g., Alaska at 1-2; Anchorage School Dist. at 1; DataCast at 1; Great City Schools Council at 2; Kansas Hosp. Ass'n at 1; KM Broadcasting at 4; Maine Dept. of Ed. at 1; Missouri PSC at 1-2; Missouri Res. Ed. Net. at 4; Missouri State Library at 2; Mississippi Council for Ed. Tech. at 2-3; NJ Ratepayer Advocate at 2; New York City Dept. of IT&T at 2; NYSDPS/NYSED at 1; North Dakota PSC at 1; CNMI at 4; RUPRI at 1; South Carolina OIR at 1; Utah Ed. Net. at 1.

³⁰ See 47 C.F.R. §§ 54.504(b)(3), 54.603(b)(3) (requiring an applicant to wait four weeks from the date its request for services is posted on a website to make commitments with a selected service provider).

³¹ For example, a school that uses a courier service to deliver its signed contract on the morning of the first day of a window will be treated the same as a library that files its contract several days later. See also Maine Dept. of Ed. at 1 (staff in rural Maine will likely have to work in the evenings in order to prepare their submission for universal service support).

³² See, e.g., Great City Schools Council at 2 (noting that window will not stop large buyers such as statewide consortia from claiming sizable portions of the initial \$1 billion allotment); Montana PSC at 2 (should assure that all states receive at least some opportunity to receive funding); Montana School Boards Ass'n at 2 (windows will exacerbate problem, will only ensure that similarly situated entities are treated more equally and will not ensure equal distribution across all states).

million for health care providers, because it estimated that these monies would be sufficient for all applicants during the funding year. We emphasize that we have no reason to revise these estimates and have no reason to believe that either of the caps will be reached during the initial filing period, nor at any other point during the funding period. We are adopting a window primarily to allow applicants sufficient time to negotiate contracts properly and submit complete filings.

10. The Commission will send a copy of the Third Report and Order and this FRFA in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.³³ A copy of the Third Report and Order and this FRFA will also be published in the Federal Register and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.³⁴

Action by the Acting Chief, Common Carrier Bureau

³³ See 5 U.S.C. § 801(a)(1)(A).

³⁴ See 5 U.S.C. § 604(b).